IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1372 OF 1998

Bank of Baroda. ... Plaintiff.

V/s.

Mr. Sanjay Ramchandra Deshpande. ... Defendant.

Mr. Prathamesh Gokhale i/b. J.J. Joshi for the Plaintiff.
Ms. Saloni Desai for the Defendant.

CORAM : A.S. OKA, J.
DATE : 23rd AUGUST 2007.

ORAL JUDGMENT :

. The suit is listed under the caption of "Undefended Suit for Exparte Decree". The learned Counsel for the Defendant states that the Advocate on record for the Defendant had written a letter to the Defendant seeking instructions. She states that the Defendant has not responded to the letter and therefore, the Advocate on record for the Defendant will apply for discharge.

2. The Plaintiff - Bank has filed this suit for recovery of the sum of Rs.53,789/- together with interest thereon at the rate of 14% per annum as prayed in prayer clause (a). According to the case of

the Plaintiff, the Defendant applied under the Prime Minister's Rojgar Yojana Scheme for grant of a credit facility for acquiring a Computer and Printer with accessories. On the request made by the Defendant, the Plaintiff granted a Term Loan facility to the Defendant with a limit of Rs.54,000/- since the year 1995. The Defendant executed various documents by way of security for repayment of loan. As the Defendant was very irregular in making repayment of the amount payable under the Term Loan facility, the Plaintiff by a letter dated 3rd October 1996 called upon the Defendant to regularize the account. However, the Defendant failed to take steps. By Advocate's notice dated 24th February 1998, the Plaintiff called upon the Defendant to pay the entire outstanding amount. As the Defendant failed to comply with the notice, the present suit has been filed. The Defendant has not filed any written statement.

3. By an ad-interim order dated 5th May 1998, this Court directed the Defendant to hand over his computer and printer to the Plaintiff - Bank within one week from today after getting the valuation of the said computer and printer done. This Court directed that in case the Defendant does not hand over the

computer and printer to the Plaintiff within the time stipulated in the order, the Court Receiver shall take actual possession of the computer and printer and shall sell the same by private a treaty or auction and appropriate the said amount towards the claim of the Plaintiff. The ad-interim order was confirmed by this Court by order dated 8th June 2001. The learned Counsel for the Plaintiff on instructions states that no amount could be recovered from the computer and printer of the Defendant.

4. The learned Counsel for the Plaintiff has tendered on record an affidavit of evidence of Shri N. Chandrashekhar, the Chief Manager of the Plaintiff - Bank. The said affidavit is marked as 'X' for identification and is taken on record. The learned Counsel has also tendered on record a compilation of eight documents. The said compilation is marked 'Y' collectively for identification and the same is taken on record.

5. The Plaintiff has produced the following original documents :-

(i) The Demand Promissory Note dated 13th March 1995 executed by the Defendant;

(ii) The instrument of hypothecation of goods dated 13th March 1995 executed by the Defendant;

(iii) The original agreement hypothecation of machinery dated 13th March 1995; and

(iv) The original letter of instalment with acceleration clause dated 13th March 1995 executed by the Defendant.

6. The execution of the said documents has been proved by the said affidavit. The Plaintiff has also produced an office copy of the Advocate's Notice dated 24th February 1998. The claim of the Plaintiff has been duly proved by the aforesaid affidavit of Shri N. Chandrashekhar. The prayer in the suit is for grant of interest at the rate of 14% per annum with quarterly rests. The further interest will have to be granted at the rate of 14% per annum on the principal amount. The decree deserves to be passed in terms of

prayer clause (a) with the aforesaid modification. In view of reasons recorded in the judgment, prayer clauses (b) and (c) cannot be granted.

7. Hence, I pass the following order :-

(i) The Defendant is ordered and decreed to pay the sum of Rs.53,789/- to the Plaintiff alongwith interest thereon at the rate of 14% per annum from the date of institution of the suit till realization or payment;

(ii) The Defendant shall pay costs of the suit to the Plaintiff;

(iii) The Plaintiff will be entitled to the refund of Court fees if any, as per the rules;

(iv) Certified Copy is expedited.

JUDGE